



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R8-ES-2021-0169; FXES11140800000-223-FF08ECAR00]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application; Proposed Low-Effect Habitat Conservation Plan and Associated Documents; County of San Diego, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Ramona Municipal Water District (applicant) for a 4-year incidental take permit for the endangered Stephens' kangaroo rat and arroyo toad pursuant to the Endangered Species Act of 1973, as amended (Act). We are requesting comments on the permit application and on the preliminary determination that the proposed habitat conservation plan (HCP) qualifies as a "low-effect" HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended. The basis for this determination is discussed in the environmental action statement and the associated low-effect screening form, which are also available for public review.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Obtaining Documents:* Electronic copies of the documents this notice announces, along with public comments received, will be available online in Docket No. FWS-R8-ES-2021-0169 at <https://www.regulations.gov>.

Submitting Comments: You may submit comments by one of the following methods:

- *Online:* <https://www.regulations.gov>. Search for and submit comments on Docket No. FWS-R8-ES-2021-0169.
- *By hard copy:* Submit comments by U.S. mail to Public Comments Processing, Attn: Docket No. FWS-R8-ES-2021-0169; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Snyder, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: 760–431–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Ramona Municipal Water District (applicant) for a 4-year incidental take permit for two covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). The application addresses the potential “take” of the endangered Stephens’ kangaroo rat and arroyo toad in the course of activities associated with installation of a

20-inch-diameter effluent pipeline in San Diego County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the habitat conservation plan (HCP) prepared by the applicant.

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a “low-effect” HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

Background

Section 9 of the Act and its implementing Federal regulations prohibit the “take” of animal species listed as endangered or threatened. Take is defined under the Act as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct” (16 U.S.C. 1538). “Harm” includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The applicant requests a 4-year permit under section 10(a)(1)(B) of the Act. If we approve the permit, Stephens’ kangaroo rat (*Dipodomys stephensi*) may be taken as a result of temporary impacts to 8.61 acres (ac) of habitat the species uses for breeding,

feeding, and sheltering. Because potential incidental take is unlikely to be observed in burrows, the take limit will be set by habitat, and we estimate the number of individuals taken based on estimated density. Within 8.61-acre area, average Stephens' kangaroo rat density is categorized as low to trace (0-5 individuals per acre). In addition, arroyo toads {a. southwestern t. [*Anaxyrus californicus* (*Bufo microscaphus* c.)]} may be taken within the 11.59-acre project impact area. No arroyo toad breeding habitat will be impacted, but some individuals may be aestivating (a prolonged period of dormancy) within the project area. Any individual arroyo toads observed within the project area will be translocated to nearby suitable habitat. The take would be incidental to the applicant's activities associated with installation of a 20-inch-diameter effluent pipeline in San Diego County, California. The project includes in-perpetuity preservation and management of 8.61 ac of Stephens' kangaroo rat habitat within a 79-ac preserve managed for the species, and invasive species management in support of the arroyo toad.

The proposed project will temporarily impact 11.59 ac of land through trenching and placement of the pipeline, including 8.61 ac of Stephens' kangaroo rat habitat. Arroyo toads have been observed in wetland habitat near the proposed project site, and individual arroyo toad(s) may be aestivating underground within the project area and may be impacted during construction.

To minimize the effects of project construction on the Stephens' kangaroo rat, the proposed HCP includes fencing of the work area as well as trapping and relocation of individual Stephens' kangaroo rats prior to construction impacts. The applicant proposes to mitigate for permanent impacts to 8.61 ac of occupied Stephens' kangaroo rat habitat through preservation of 8.61 ac of occupied Stephens' kangaroo rat habitat within a nearby conservation easement and funding of long-term management to benefit the species.

To minimize take of arroyo toad, the proposed HCP includes measures to install arroyo toad exclusionary fencing around the work area and trap and relocate any arroyo toads in the work area prior to construction impacts. To mitigate impacts to arroyo toad, the applicant's proposed HCP includes measures to eliminate invasive species that prey upon arroyo toads in a nearby pond that is known to support arroyo toad breeding.

Proposed Action and Alternatives

The proposed action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the Stephens' kangaroo rat and arroyo toad. If we approve the permit, take of Stephens' kangaroo rat and arroyo toad would be authorized for the applicant's activities associated with the pipeline installation project. In the proposed HCP, the applicant considered the No Action Alternative. Under the No Action Alternative, no incidental take of Stephens' kangaroo rat or arroyo toad would occur, and no long-term protection and management would be afforded to the species. Under this alternative, the applicant would not be able to meet the growth and development needs of San Diego County.

Our Preliminary Determination

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1) and as a "low-effect" plan as defined by the *Habitat Conservation Planning Handbook* (November 1996).

We base our determination that an HCP qualifies as a low-effect plan on the following three criteria:

- (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- (2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
- (3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the Act by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of Stephens' kangaroo rat and arroyo toad.

Public Comments

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Scott Sobiech,
Field Supervisor,
Carlsbad Fish and Wildlife Office,
Carlsbad, California.

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